Tuesday, November 10, 2020 at 5:15pm
Board of Zoning Appeals
In-Person Meeting
CC Woodson Community Center, Gymnasium

Board Member Attendance: Ryan Gaylord, Janie Salley, Anne Poliakoff, Jim Badger, Reed Teague, and Leana Melnichuk. Livia Cantrell was absent.

City Staff Attendance: Rachel Grothe Planner II and Julie Roland Administrative Assistant.

Mr. Gaylord, the Chair, called this meeting to order on November 10, 2020 at 5:15 P.M., and said this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the requirements of the City of Spartanburg Zoning Ordinance.

Ms. Poliakoff moved approval of the agenda for tonight’s meeting; and she was seconded by Ms. Melnichuk. The motion was approved by a vote of 6 to 0.

Disposition of the minutes from the October 13, 2020 meeting

Ms. Salley moved approval of the minutes as presented; and was seconded by Mr. Teague. The motion was approved by a vote of 6 to 0.

Old Business: No old business.

New Business

Variance to district standards-102 Neely Avenue-Owner is seeking permission to reduce the front yard setback in order to accommodate a screened in attached front porch that was constructed without the benefit of a building permit in on a property in the R-15 zone district. Charles Hodge, Hodge & Langley Law Firm on behalf of Jan and Carla Gaskins, Owners.

Mr. Gaylord said what we'll do for the benefit of our members of the public here and our applicant, we would have the City present the variance application and then we'll hear from the applicants, and applicants' counsel. Then if there are any members of the public who would like to present evidence in opposition to the application, you will then have that opportunity. The applicant and applicants' counsel would have the opportunity then to present rebuttal evidence. Once we have concluded that portion of the hearing, we will hold a public comment in which members of the public are free to provide commentary and their position with regard to this application, then we would close public comment and move to a Board discussion and presumably a motion and vote. I hope that helps give you a little bit of guidance of how we'll proceed tonight, and with that we will recognize Ms. Rachel Grothe with the City of Spartanburg to present this application.

Ms. Grothe, Planner II, was sworn; and she entered the Power Point presentation. This is a variance to district standards, more specifically to encroach into the front yard setback. The project site is an approximately 12,600 square foot substandard lot in the R15 zone district, the lot is considered substandard because it does not meet the minimum 15,000 square foot lot area, or the 100-foot minimum lot width. The lot contains one single family home that was constructed in approximately 1950. The site is approximately 180 feet away from the corner of Lucerne Drive and Neely Avenue and it is part of the Parkdale subdivision, which is located on the eastern periphery of the property. The surrounding neighborhood is comprised of entirely single-family dwellings. The property owners constructed an approximately 180 square foot screened in attached porch on the side of their home without the benefit of a building permit. The illegal work was discovered by a City Building Inspector.
who happened to be driving by and observed the construction in progress. Unfortunately, by the time the work was found by the City, the owners were putting the finishing touches on the porch. So, since the permit had not been obtained, the owners were required to apply for a building permit after the fact. So, review of the permit by myself revealed that the porch did not meet the required 40-foot front yard setback as required by the R15 zone district. This is a Google street image that just shows the house, what it looked like prior to the porch construction. Then I just did like a pedestrian reconnaissance of the neighborhood on foot to give everyone an idea of what the houses look like out there, where they were oriented and sitting on the lot, or on their lots. This is all on Neely and you can see they all, for the most part, line up. I advised the owners of a couple of options moving forward, including providing a survey to determine the exact location of the property lines and the front yard setback that surrounds the properties in the event that front yard averaging could be utilized. Unfortunately, the survey revealed that the porch does in fact encroach 10 feet into the required front yard setback. Furthermore, front yard averaging revealed that nearby properties all appear to meet the required 40-foot front yard setback. So, since the porch does not meet the front yard setback and staff has been unable to find any additional inceptions in the ordinance, the owners were instructed to either remove the porch or apply for a variance to the required front yard setback in order to clear the violation on their property. I pulled this from County GIS and it's really just sort of for comparison purposes. This shows the location of homes on Neely and all of the homes on the same side of the street of the subject property, appear to be in line with the subject house. There do not appear to be any encroachments by any of the surrounding houses into the front yard setback. There are findings that y'all need to agree on with in terms of a variance. In order to approve a variance, there needs to be extraordinary and exceptional conditions that pertain to this particular piece of property. I found no extraordinary or exceptional conditions that pertain to the subject property. In fact, quite the opposite is true. The subject property is uniform to the surrounding area, the properties surrounding the subject block are similarly sized, so 75’ by 170’, and are approximately 12,700 square feet in area. So, they're all similar in size or shape and build, so the reconnaissance of the nearby lots revealed that each were developed with similarly sized houses as the subject property, and all appear to meet the required 40-foot front yard setback, and a review of the county GIS mapping shows this as well.

The second finding is that conditions do not generally apply to other properties in the vicinity. The subject property was created as a part of the Parkdale subdivision in 1948. The original subdivision map shows that the vast majority of the lots all possess the same characteristics and features, 75 feet in width, 175 feet in depth, and approximately 12,750 square feet in area. All lots appear to have the same flat topography, and appear to have been developed around the same time frame as the subject lot. Based on county data the house on the subject lot was built in 1950 and all the nearby houses were constructed between 1950 and 1956. Additionally, the majority of the houses possess the same architectural features. Gabled roof, horizontal siding, shutters, a stepped gable roof, and small recessed porches. There do not appear to be any houses on the block that possess a similar screened in front porch. Another finding is because of these conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. The owner does not require a variance to the front yard setback in order to utilize their property, the existing recessed porch and area in front of the stepped gable roof could be screened into the porch that could meet the required front yard setback. Second to last finding is the authorization of variance will not be of a substantial detriment to the adjacent property, or to the public good, and the character of the district will not be harmed by the granting of the variance. The approval of this variance will not be of substantial detriment to the adjacent property; however, the granting of this variance will pose a
detrimnet to the character of the district as the screened in porch significantly changes the established character of the neighborhood. More importantly, such a porch does not meet the required 40-foot front yard setback, a setback that all nearby properties appear to meet. The primary purpose of the front yard setback is to create a sense of order and uniformity within the neighborhood. The subject's porch encroaches 10 feet into this required setback where all the surrounding houses meet it, which interrupts the rhythm from the street. Finally, if granted a variance being attached to its conditions, in the event that the Board finds the variance findings can be met and the prior approved conditions of approval are attached to this report and the Board may choose to approve or amend them based on the outcome of this proposal. This concludes my presentation. Staff recommends denial of the variance as the required findings could not be met. I'm available to answer any questions that y'all may have and I believe the owner and their representative is here as well.

**Board Member Questions:**

Mr. Gaylord said in your report you'd noted that the lot was considered a substandard lot and noted that it did not meet the minimum square footage or size of lot width, what would be the standard applied, or how was that standard created. Is that standard created by the zoning code itself.

Ms. Grothe said yes, it's listed in the ordinance of what the minimum lot size should be for each zone district and what the minimum lot width should be.

Mr. Gaylord said so ultimately it would seem that the majority of the houses in this neighborhood are substandard and the zoning code doesn't seem to account for the actual size of the lots, at least in this neighborhood. Would that be a fair assessment.

Ms. Grothe said yes, the lots don't, not the houses themselves; but the lots themselves would be in my opinion, considered legal non-conforming. So, they don't meet what we have written in today's code in terms of lot size or lot width.

Ms. Poliakoff said would that be the majority of the lots in Parkdale.

Ms. Grothe said yes.

Mr. Gaylord asked that the other existing setbacks are 40 on the front, 40 on the rear, 15 on each side.

Ms. Grothe said that's correct.

Ms. Salley said if they had really put their porch on the back side of the house with a permit, everything would've been aligned.

Ms. Grothe said that's correct, they had plenty of room in the backyard and would not encroach into any of the setbacks.

Mr. Teague said did you specifically identify the size of the adjacent lot.

Ms. Grothe said yes, because I looked at the original plan that created that entire neighborhood and they're all the same size.

Mr. Teague said do you know that the property to the left, the property to the right, and the property across the street are less than 15,000 square foot.

Ms. Grothe said I know that if you're standing in front of the house, the property to the left is the same size as it sort of butts up to other lots that face out onto Lucerne. I don't know off the top of my head what the lot sizes are for the lots across the street. This is our lot and these are the ones across the street. So, 75' by 175', and they're all the same.
Mr. Gaylord asked Ms. Grothe, can you put that on the record please.

Ms. Grothe said yes, I was just indicating form the original plat what the lot sizes are of the neighborhood. 75 by 175.

Reed Teague said there appear to be some lots corners that appear to be larger than these other ones. Is that right, that they're in the same neighborhood.

Ms. Grothe said I guess you would probably call that the same neighborhood, it's all part of the Parkdale neighborhood. I was just looking within the immediate vicinity.

Mr. Gaylord said Thank you. He asked if any other Board Members had any other questions for Ms. Grothe before we proceed. All right, thank you. Mr. Hodge, I take it you'll be speaking on behalf of the applicant this evening.

Mr. Hodge said yes, sir.

Mr. Charlie Hodge was sworn and said he was here to represent Jan and Carl Gaskins. Thank you for the opportunity, thank you for your hard work by the way, especially in this difficult time. Jan and Carl bought 102 Neely Avenue in 1987, I think this home may have been built in 1948 and when the home was originally built, and in 1987 when it was purchased, there wasn't a 40-foot setback requirement, there was a 30-foot setback requirement. We know this because Mr. John Gooch who surveyed this property did some research for us. I have an affidavit from Mr. Gooch that I'd like to put into the record.

Mr. Gaylord said Mr. Hodge, we'll accept Mr. Gooch's affidavit into evidence as exhibit two for this application.

Mr. Hodge said thank you very much. As we can see, Mr. Gaskins complied with everything the City asked. He went and got a survey just like the City asked. Mr. Gooch tells us that when he pulled that plat book, the minimum setback was 30 feet. He researched the deed form 1987, it matched the amount from plat book 023, a 30-foot setback. Now in 2020, Mr. Gaskins built a porch that stood 30 feet from the road. It matched those setback requirements and it matched the setback requirements that were in effect when he purchased the home. If he had known that the law was changed, that the rules had changed, certainly he would've gone to the City, but we didn't know until after the thing was built and that's frustrating. We have the survey. In addition to trying to comply with the City's wishes, Mr. Gaskins went and took a bunch of pictures and I've got those pictures to share with you, of adjacent properties. In fact, if you go outside and you look at the properties on his street, you'll find that many of them, newly constructed, are far less than 40 feet setback from the road. So, it's a bit frustrated to why we're getting picked on when adjacent neighborhood properties have front porches right outside that encroach far closer than Mr. Gaskins. Here's Collins Avenue, 24 feet; Culver Avenue, 34 feet; Collins Avenue, 34 feet; Collins Avenue; Anita Drive, 36 feet; 1st Avenue, 35 feet; Neely Avenue, 38 feet; Lucerne Drive, 32 feet.

Mr. Gaylord said I know some of these photographs were included within the packet we have here, but if we could introduce, or would you introduce these other photographs so that we have this full collection for the evidence.

Mr. Hodge said I'd like to introduce all the photographs that we handed up and put them in as a collective exhibit. Mr. Hodge showed two pictures to the Board Members he had brought with him of the final completed porch.

Mr. Gaylord said those will be accepted as exhibit four.
Mr. Hodge said in response to Ms. Grothe's specific notations, let me make sure I get the language correct. Extraordinary or exceptional conditions pertaining to this particular piece of property, the first and foremost is that the property was first, in 1987, had a 30-foot setback requirement, we’ve complied with that setback requirement. The second, conditions don’t apply to other properties; well they do. We've got pictures that show adjacent properties that do not meet the setback requirements that the City has asserted. Three, authorization of the variance, not a substantial detriment to other homes. Well, we would submit that the addition of the porch has enhanced the property and don’t take Charlie Hodges word for it, ask all of the neighbors right back here because they've come in support of the owners. So, these people are not people of means, they spent $7,500 on this and Gooch thinks if they'd known that the 40 foot was going to be argued by the City, they would’ve taken issue with it, but they didn't know. But despite that, they've done everything. I've met with this lady, I've gone to the City, we've given them the pictures, we got the survey, we provided the evidence that the plat book in question was a 30-foot setback requirement. But yet, they want these people to tear this porch down. It's exceptional and it's extraordinary for this particular piece of property and that's why I ask that you grant the variance. Thank you.

Mr. Gaylord asked if any members of the Board have any questions for Mr. Hodge.

Ms. Salley said if they had got the building permit would this have been avoided.

Mr. Hodge said I suspect they would've adopted the same position that would’ve denied it. We had to go through the process.

Ms. Melnichuk said is there a reason why they didn't get the permit.

Ms. Hodge said they presumed that they were grandfathered in with the 30-foot setback requirement, as I would, as anyone would. If you have a small piece of property and you can build a porch with a 30-foot setback that met half the requirement.

Leana Melnichuk said isn't it standard to get a permit to build a porch, or add an addition. I thought that was the standard.

Mr. Hodge said it might be for you and me. Remember, these people bought this house in 1987. They've never done this before.

Mr. Teague said is there an equitable term called waste in the law and that if we went with the City's recommendation, wouldn't we result in waste in having these people just tear down the property that was built.

Mr. Hodge said yes, what an eyesore it would be to tear it down, you'd have this gaping hole. And I think the neighbors will tell you, this hasn't hurt the property, it has helped the property.

Mr. Gaylord said Mr. Hodge, looking at the photographs of the completed project, it would seem that the way the porch was connected to the roof line in addition to tearing it down, there would also have to be some work to remedy the prior structure to even bring it back to where it was. Has any other members of the Board been able to see all the photographs. Are there any other questions for Mr. Hodge.

Ms. Grothe asked the Chair would she be able to make a rebuttal and point some additional information out.

Mr. Gaylord said I think what would be next would be any other evidence in opposition, which then the applicant would be able to rebut if they so choose. But I would say that would be an appropriate time for that.
Mr. Gaylord said we'll do that and then we'll see if there're any other members of the public who care to speak.

Ms. Grothe said I just wanted to make sure everyone fully understood the amount of work and research that went into this request in our department with myself, with the zoning ordinance, with my Supervisor, with the City Attorney. I just wanted to address the survey that was provided. That 30 foot, and this is a really important distinction, that 30-foot building line. I did some research and I found a planning advisory service from April 1949 that discusses building lines mastery setbacks in front yards. In this article it states that building lines are utilized by communities principally to achieve planned street patterns, they help ensure that buildings will not be erected in the bed of projected streets or of potential street widenings. Our conclusion is that the 30-foot building line was to ensure that in the event of a future street widening, the City could claim the land by evident domain and therefore offers no protection for the violation of the 40-foot front yard setback. And this something that I went over pretty extensively and it might just seem like semantics, and folks may use these terms interchangeably. Another thing that I wanted to point out, if I could have made this work, I would have. From the zoning ordinance, I would have made it work. We have a section of our ordinance that allows for front yard averaging and I looked at that and it didn't work. So, the pictures that he provided, he provided those same photos to me, those were not sites that I was even able to look at because it wasn't within the radius of properties that we're allowed to look at under the zoning ordinance, if that makes sense.

Mr. Gaylord said Thank you, Ms. Grothe. Are there any other members of the public that care to present any evidence in opposition to the application for a variance at 102 Neely Avenue. All right, well with that, is there a motion to open public comment.

Mr. Teague moved to approve the request to open public comment, and he was seconded by Ms. Poliakoff.

**Public Comments**

My name is Russel and I live at 537 Lucerne Drive, which is only two doors up from Mr. Gaskins house. I see his house every day when I walk out my back door to go to my front porch. I believe that screen porch, as said before, has added to the appearance of his house. I've known Mr. Gaskins and Jan, and there was nothing done intentional, nothing done to be sneaky, nothing done to try to get over on somebody. It was just a mistake that was made, but it does nothing that I see from my property to diminish the view of our neighborhood. It's an improvement to their house, that's all I'm going to say. Thank you very much.

My name is Mary and I live at 541 Lucerne Drive. My backyard backs up to the Gaskins side, so I see their porch every day when I go out on the back porch and it looks great. It helps block some of the other stuff that's on the other side of their house, but you can still see through it, it's just a screen porch and it's an improvement to the house. Thank you.

My name's Charles and I live at 541 Lucerne Drive; you just heard my wife speak. Unfortunately, I haven't heard most of what's been said here today. I'll say this, I've known Jan ever since he moved in the neighborhood and he has been here a long time. For my purpose, to have a porch that actually improves the property, it fits the house very nice and it looks very good. I see no problem with any kind of disruption or hurting the neighborhood or property values that I can see.

Mr. Gaylord asked are there are any other members of the public that care to provide any comment. There being no-one else, Mr. Gaylord closed the public hearing.
Board Deliberations

Ms. Salley said I can understand your reasoning for not knowing that you needed a building permit, I can understand Ms. Rachel Grothe’s findings. I do know that the pictures look well, but I really don’t feel that it’s in the best interest of Mr. Gaskins to move the porch. I would have to agree with my constituents on their decision and all of the others.

Ms. Grothe agreed with Ms. Salley. I do want to add that it concerns me if we approve this and can meet the criteria in some way shape or form, what’s going to happen when the next person comes up with a different type of structure that’s maybe something you don’t find as aesthetically pleasing, yet it’s past the setback line. That concerns me and I have to give some thought to it. Thank you.

Ms. Melnichuk said usually I’m the person that tries to take total rule, but I do understand that not everybody always knows what’s required of them or what the ordinances are, so I do kind of feel for the person in question. But also, I don’t really want them to have to tear down the porch, because the porch does add value to their house and it does look aesthetically pleasing.

Mr. Teague said in looking at our requirement and looking at the Parksdale map, I indicate that I’m no mathematician, but just looking at lots 2, 1, 9, 10, 11, 12, 16, and 14 all seem to be much larger than the subject lot. I also noted from the materials put into the record by the applicant that there are other houses in the neighborhood that have porches that are within the 40-foot setback, some past the 30-foot line, and there’s been no issue that I’m aware of with those properties. So, within the documents provided by the City, it notes that the lot is of substandard size. If it’s of substandard size and there are lots within the neighborhood that are not, which they appear to potentially be, from the ones that I just looked at on the Parksdale map, then that would stand out as an extraordinary exceptional condition for this particular piece of property. I think that the information provided by the other properties in that condition would meet the requirements of the code to grant variance. I also note that the affidavit of John Gooch noting that when the property was purchased that there was a 30-foot minimum setback and that that changed over time should be taken into account. I’d also note that this would result in just a total waste for a porch that no one did intentionally. None of the neighbors have any problem with it, clearly from the photographs it makes the area look better. It is not so far stuck out close to the road that it makes it different from other property’s and it’s within the 30 feet that’s identified by the surveyor as the setback when the property was purchased. I think taking those issues into consideration, the waste that it would cause, and the fact that there is a way to meet the standards that was the variance, it would be my recommendation that we accept the applicants request and reject the City’s request with the caveat. We certainly don’t want to encourage people to not get building permits and go around the requirements of the City; and that we don’t want it to look like that’s the position we’re setting forth. But that’s my position on it and I’ll pass it on to the other Board Members.

Mr. Gaylord said thank you Mr. Teague. To the follow-up with Ms. Poliakoff’s comment about precedent, I’m always very concerned about the precedent we establish. Of course, I’m also thoughtful of the fact that within our last few meetings, we’ve granted variances on basis of those substandard lots, and on basis of the construction norms having changed over time in relation to the zoning ordinance. It would seem that a lot of those conditions apply here, both with regard to this being a substandard lot that’s not, as Mr. Teague said, is not uniform throughout the plated portion of the subdivision, and then we have this issue where the applicable rules seemingly changed since the property was constructed originally. I’m concerned with wanting to make sure though that the City would have the ability to inspect the completed structure to confirm that, with the exception of any kind of setback issue, that it’s otherwise constructed to code from a safety perspective. Is there any response to that, or Mr. Teague would you perhaps like to make a motion, looking at the required findings.
Mr. Teague said yes, I do certainly appreciate the City's time and the information provided, but as I previously noted, I would make a motion that we accept the applicants' variance based upon the facts that I previously provided in my statements that the lot size creates an extraordinary and exceptional condition and that the property, tearing it down would result in waste and that all the other portions of the ordinance are met. I would say that's my motion to approve the applicants' variance.

Mr. Gaylord said Mr. Teague may I add to your motion a requirement that the property structure be investigated and confirmed that it is otherwise up to building code standards.

Mr. Teague said yes.

Mr. Gaylord said okay, we have a motion to find that the necessary conditions exist with regard to this property at 102 Neely Avenue. There are extraordinary and exceptional conditions pertaining to the particular piece of property, and that these conditions do not generally apply to other properties in the vicinity. Because of these conditions, the application of the ordinance and particular piece of property would effectively prohibit or unreasonably restrict the utilization of the probably; and that the authorization of a variance will not be of substantial detriment to the adjacent property or the good and the character of the district will not be harmed by the granting of this variance. Approve a motion that we would find that this variance application satisfies is for permissions, that if we would approve the variance subject to the condition the porch be constructed to applicable building code requirements.

Mr. Teague moved to approve the request; and he was seconded by Ms. Melnichuk. The motion was approved by a vote of 4-2, with Ms. Poliakoff and Mr. Badger voting in opposition.

Staff Announcements:

Ms. Roland said I just wanted to say that we're coming nearer to the end of 2020 and I think Ms. Melnichuk is going to take her 2020 CE Training, and I believe everybody else has received their training for this year, except for the new Board Member who has a year within being appointed to complete her training.

Ms. Roland said we may have another case already for December.

There being no other business, the meeting was adjourned at 6:20 P.M.

Ryan Gaylord, Chair

Minutes edited by Latise Savoy and Julie Roland